

The complaint

Mr C complains that Wise Payments Limited won't refund the money he lost to an investment scammer.

What happened

On 3 October 2022, Mr C was contacted by someone from a company I'll call 'C' in response to an enquiry he made on trading in cryptocurrency. He says he checked C out and they appeared to be a legitimate company. He decided to sign up for an account with C and made an initial investment of \$200 from his account with another banking provider (Bank A).

Mr C saw some small gains and was contacted again on 10 October 2022 by a representative of C. The representative explained if he wanted to make bigger profits, he'd need to make larger investments. He suggested that Mr C open an account with Wise and a crypto exchange account with a company I'll call 'B'. The representative explained that this would make purchasing crypto and funding his trading account with C easier. Mr C agreed. C's representative contacted Mr C several more times to discuss funding and having seen modest gains, Mr C decided to increase his investment.

Mr C made the following debit card payments from his Wise account, to his B account:

Transaction number	Date	Amount
1	28 October 2022	£4,000
2	21 December 2022	£8,000
3	22 December 2022	£9,000
4	23 December 2022	£8,750

C's representative tricked Mr C into believing that transaction 2 and 3 were required by B in order to pass advanced authorisation and to enable a reverse transfer. The scammers posed as Wise to trick Mr C into believing that transaction 4 was required by it in order to pay tax on the money.

Mr C realised after his withdrawals weren't processed that he was scammed. He reported the matter to Bank A, Wise and this service. Mr C didn't hear back from Wise in response to his complaint, so he asked this service to proceed in absence of a final response from it. Wise subsequently responded to this service to explain that it was not responsible for Mr C's loss. It attempted to recall the payments from B but it didn't hear anything back from it. Wise said the transactions were approved via 3DS, which it explained provided an added layer of security.

One of our Investigators looked into things and felt Wise could have reasonably prevented some of Mr C's losses. He suggested that Wise refunds the payments from transaction 2 onwards together with interest.

Despite multiple chasers from our investigator, Wise did not respond. The case has therefore been passed to me for determination and I'll proceed with my decision in the absence of Wise's response.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so, I uphold this complaint in part and I'll explain why.

Banks and other Payment Services Providers ("PSPs") have expectations to protect customers against the risk of financial loss due to fraud and/or to undertake due diligence on large transactions to guard against money laundering (see below). But when simply executing authorised payments, they do not have to protect customers against the risk of bad bargains or give investment advice — and the FCA has confirmed that a fraud warning would not constitute unauthorised investment advice.

There's no dispute from either party that Mr C was the victim of a scam. The evidence before me also indicates that C were scammers. For example, the FCA published a warning about them on 13 December 2022. Having concluded that this was a scam rather than just a genuine investment that went wrong, I must now go on to consider three more issues in order to determine the outcome of the complaint:

1. Should Wise have fairly and reasonably made further enquiries before it processed Mr C's payments?
2. If so, would Wise's further enquiries have made a difference and prevented or reduced the loss?
3. And if so, should Mr C bear some responsibility for the loss such that it would be fair and reasonable to reduce compensation proportionately.

Should Wise have fairly and reasonably made further enquiries before it processed Mr C's payments?

The starting point under the relevant regulations (in this case, the Payment Services Regulations 2017) and the terms of Mr C's account is that he is responsible for the payments he authorised himself.

However, taking into account the law, regulatory rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider Wise should fairly and reasonably:

- Have been monitoring accounts—and any payments made or received—to counter various risks, including anti-money-laundering, countering the financing of terrorism, and preventing fraud and scams;
- Have had systems in place to look out for unusual transactions or other signs that might indicate its customers were at risk of fraud (amongst other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which banks are generally more familiar with than the average customer; and
- In some circumstances, irrespective of the payment channel used, have taken additional steps, or made additional checks, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.
- Have been mindful of – among other things – common scam scenarios, the evolving fraud landscape (including for example the use of multi-stage fraud by scammers).

I've noted this account was newly opened for the purposes of funding the investment opportunity. In my view, Wise didn't have a picture of what 'normal' account activity looked

like for Mr C. Therefore, I don't think transaction 1 should have appeared all that unusual. I think the 3DS check was a proportionate security check for Wise to have undertaken. But when Mr C made transaction 2 of £8,000, I am satisfied Wise ought fairly and reasonably to have identified from the information available to it that there might be an increased risk associated with the payment and, in those circumstances it should fairly and reasonably have made further enquiries.

I've noted the £8,000 payment was being made to a crypto exchange account in Mr C's name and by that time, he'd already made a single payment to the same account a couple of months earlier. But the £8,000 payment was a significantly larger payment than Mr C had made from his relatively new Wise account.

In my view this combination of circumstances ought fairly and reasonably to have led Wise to make additional enquiries before making the payment to establish the circumstances in which Mr C was making a large payment to his crypto exchange account - an activity which could be consistent with investment scams, notwithstanding the payment was being made to an account in Mr C's name.

I think Wise ought fairly and reasonably to have made further enquiries. I consider Wise ought to have been mindful of the potential risks to Mr C of 'multi-stage' fraud – whereby victims are instructed to move funds through one or more legitimate accounts held in the customer's own name to a fraudster – which ought to have been well known to Wise at the time.

I've noted that Wise did not make additional enquiries and I don't think the 3DS check was proportionate to the risks it ought to have reasonably identified. In my judgement, it was a missed opportunity to make further enquiries.

Would Wise's further enquiries have made a difference and prevented or reduced the loss?

I think any reasonable enquiries from Wise would have led it to suspect that Mr C was the victim of a common investment scam. At the time of transaction 2, Mr C was trying to withdraw his profits and was being asked to make payments to enable the withdrawals. I think Wise – as a financial professional – would have identified this carried common characteristics of an investment scam.

I think if Wise explained the way in which scams like this operate Mr C would have realised he'd fallen victim to a scam. And even if Mr C didn't think he was being scammed, I think he'd have likely gone away to carry out some further extensive checks about the operation of crypto scams and he'd have realised that he was being scammed. In other words, I think reasonable further enquiries from Wise would have likely stopped Mr C from sending further payments to the scammers.

Should Mr C bear any responsibility for his losses?

I've thought about whether Mr C should bear any responsibility for his loss. In doing so, I've considered what the law says about contributory negligence, as well as what I consider to be fair and reasonable in all of the circumstances of this complaint. In my judgement, this was a sophisticated scam and at the time Mr C carried out checks into C, there was no credible adverse information about them. Mr C didn't have prior investment experience and the scammers led him to believe that the requests for further payments came from legitimate sources by faking emails. I can see why Mr C believed what he was being told was true and I think it would have taken an intervening act – such as a warning from Wise – to uncover that these were common scam tactics.

Therefore, I don't think Mr C should share responsibility for the losses he suffered.

My final decision

My final decision is, I uphold this complaint in part and Wise Payments Limited should:

- Refund the disputed transactions from transaction 2 onwards. This totals £25,750.
- Pay 8% simple interest, per year, on the above amount from the respective dates of the payments to the date of settlement (less any lawfully deductible tax).

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 15 March 2024.

Dolores Njemanze
Ombudsman